



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 18, 2011

Ms. Delietrice Henry
Mr. K. Jefferson Bray
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2011-07024

Dear Ms. Henry and Mr. Bray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 417838.

The Plano Police Department (the "department") received a request for information pertaining to incident number 11-020818, including a specified video. You state you have released some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim.

You seek to withhold the requested video under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, which governs the availability of education records held by educational institutions or agencies receiving federal funds. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information").

¹A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

We note that the department, which maintains the information at issue, is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth is not an "educational agency" within FERPA). However, you state the education record at issue was transferred directly to the department from the Plano Independent School District (the "district"). FERPA permits an educational agency or institution to release education records to a third party under certain enumerated circumstances. 20 U.S.C. § 1232g(b). The federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. *Id.* § 1232g(b)(4)(B); 34 C.F.R. § 99.33(a). Because the information at issue is an education record received as a result of a transfer made pursuant to FERPA, we will not address the applicability of FERPA to the education record as our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. Thus, the department must contact the district, as well as the DOE, regarding the applicability of FERPA to the education record. As our ruling is dispositive, we need not address your arguments against disclosure.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 417838

Enc. Submitted documents

cc: Requestor
(w/o enclosures)